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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 17

JESSE M. CALHOON, as President, and HERBERT W. PETERS, as Secretary-Treasurer of District No. 1, National Marine Engineers' Beneficial Association, AFL-CIO,

Petitioner,

—against—

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 688

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of District No. 1, National Marine Engineers' Beneficial Association, AFL-CIO,

Petitioner,

—against—

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated,

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Opinions Below

The opinion of the Court of Appeals for the Second Circuit (Rec. 56-65; Petition, pp. 18-26) is not yet officially reported. The opinion of the District Court for the Southern District of New York (Petition, pp. 28-38) is reported at 221 F. Supp. 545.

Jurisdiction

The jurisdictional requirements are adequately set forth in the petition.

Statute Involved

The pertinent provisions of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 519, 29 U.S.C. 401 *et seq.*) are set forth in the Petition at pp. 13-17.

Question Presented

Whether a district court has jurisdiction, under Section 102 of the Labor-Management Reporting and Disclosure Act of 1959, over a suit brought by union members to protect the rights guaranteed to them by Section 101(a)(1) of that Act to nominate candidates in their union's elections, from infringement in the form of eligibility and nomination requirements which limit the right of nomination to a minority of the union's members.

Statement

Petitioner seeks review of a (non-final) order of the Court of Appeals for the Second Circuit which reversed the District Court's dismissal of the complaint herein and remanded the cause for further proceedings (Rec. 64; Petition, p. 26). Suit was brought under Section 102 of the Labor-Management Reporting and Disclosure Act of 1959 (the "LMRDA") by respondent union members, claiming infringement of rights guaranteed them by Title I of the LMRDA. The Court of Appeals held that the District Court had jurisdiction over the suit under Section 102.

Respondents' rights as members of petitioner local labor organization to nominate candidates in petitioner's elections have been infringed by a "spider's web" of by-law and con-

stitutional provisions which, in sum, prohibit them and most other members of petitioner from nominating *any* candidate for any union office whatever. This "spider's web" is made up of a provision forbidding members to nominate any candidate other than themselves, together with eligibility requirements so severe as to render the majority of petitioner's members (respondents included) ineligible for union office (Rec. 3-5, 8, 14-15; Petition, pp. 19-20, 24). Respondents are thus prohibited both from nominating others and from nominating themselves.

Having no intra-union recourse against the former prohibition, respondents attempted unsuccessfully to challenge the latter one by submitting their own names in nomination and appealing from their disqualification. After thus exhausting their intra-union remedies, they brought suit under Section 102 of the LMRDA to enjoin the infringement of their right to nominate candidates, which right is guaranteed to every union member by Section 101(a)(1) of the LMRDA. They did not seek to be recognized as candidates themselves or to have their names placed on the ballot; rather it was their right to nominate candidates which formed (and forms) the basis of their claim for relief (Rec. 3-6, 11, 14-16; and cf. Petition, p. 25).

Suit was commenced in August, 1963, before the ballots to be used in petitioner's scheduled 1963 election (the first general election ever scheduled to be held by petitioner) were even printed. The 1963 election has still not been held: in fact, petitioner has held only one election in its entire history, and that one was a special by-election to fill two minor vacancies on its District Executive Board (Rec. 5). All incumbent officials other than the holders of these two minor offices have been appointed rather than elected to office.

From dismissal of their complaint for want of jurisdiction, and from consequent denial of their motion for a preliminary injunction, respondents appealed. The Court of

Appeals reversed the dismissal of the complaint and remanded the cause for further proceedings below, observing that any union constitutional or by-law provision limiting nomination rights as sharply as petitioner's do "would have been deemed invalid at common-law, long before the LMRDA" (Rec. 62; Petition, p. 24).

Argument

The petition is grounded upon petitioner's contention that the intent and purpose which Congress unequivocally expressed in Section 102 of the LMRDA (which section permits union members to bring suit to protect the rights guaranteed them by Title I) is "irrational" (Petition, p. 10). Petitioner tells the Court that its (petitioner's) own view of what Congress *should* have intended is more "rational" and thus more worthy of being effectuated (Petition, p. 9).

But petitioner is mistaken. Its contention, not Congress's, is "irrational."

In adding Title I—the "Bill of Rights of Members of Labor Organizations"—to the LMRDA, Congress guaranteed certain specified democratic rights to union members and expressly authorized union members to bring suit in federal district court to protect those rights against infringement. Among these specified rights is the right to nominate candidates in union elections. Although other methods of protecting these rights were discussed, Congress wisely concluded by providing for private suits to be brought by the union members themselves.

It is that provision for private suits that petitioner now says is "irrational." Petitioner would prefer to have the protection of union members' rights left to the Secretary of Labor, whose authority is limited to challenging the results of union elections after they have been conducted and completed. Petitioner asks this Court to repeal Congress's

clearly-expressed purpose and to re-write the LMRDA to fit its (petitioner's) views. But it has come to the wrong door. If petitioner dislikes what Congress did, it should take its objections to Congress—not to this Court.

1. *The Decision of the Court of Appeals is Clearly Correct.*

Petitioner builds its "irrationality" argument out of the fact that another title of the LMRDA, Title IV, empowers the Secretary of Labor, in certain instances, to bring suit after a union election has been completed in order to set aside the results of that election. Petitioner contends that this is adequate protection for union members' democratic rights and that Congress was "irrational" in adding Title I to the LMRDA.

The relevant provisions of Title IV were already present in the original Kennedy-Ervin bill as it was reported to the Senate in March, 1959; they comprised what was then Title III of the bill. If Congress had believed that these provisions provided adequate protection for the democratic rights of union members it would not have added Title I, the "Bill of Rights" title, to the LMRDA. But it did not believe that these provisions provided adequate protection so, upon Senator McClellan's urging that it give to union members "the tools they can use themselves" to reform and democratize their unions, 105 Congressional Record 6467; NLRB, *Legislative History of the Labor-Management Reporting and Disclosure Act of 1959*, 1103, it added a "Bill of Rights of Members of Labor Organizations" to the Kennedy-Ervin bill as Title I thereof.

As the Court of Appeals pointed out below (Rec. 63-64; Petition, pp. 25-26):

> "The Senate superimposed Title I on the Kennedy-Ervin bill because it was not satisfied that the latter, including the provisions now contained in Title IV, went far enough in protecting the basic rights of

union members. It agreed with Senator McClellan's position that the bill should define fundamental rights of union members 'just as the rights of the American people are set forth in the Bill of Rights of the Constitution of the United States,' Legislative History, 1104, and overrode Senator Kennedy's initial objection that union members were better protected 'by present State law, by the provisions of the bill, and by the Taft-Hartley Act.' Legislative History, 1108. Moreover, whereas the McClellan amendment had provided for civil enforcement of the Bill of Rights by the Secretary of Labor (see § 103 of the amendment, Legislative History, 1102), the Kuchel amendment substituted the private suit now embodied in § 102, this being described as 'one of the major changes in the proposal.' Legislative History, 1232."

The scheme which Congress adopted in the "Bill of Rights" title is simple. Section 101(a)(1) provides, in relevant part:

> "Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, [and] to vote in elections or referendums of the labor organizations, * * *."

Section 102 provides for civil enforcement of these rights as follows:

> "Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. * * *"

This scheme is thus clear and self-consistent; there is nothing "irrational" about it. Any union member whose Section 101(a)(1) rights have been infringed is entitled,

by the provisions of Section 102, to bring suit for injunctive and other appropriate relief. Cf. *Beckman* v. *Local No. 46* (7th Cir. 1963), 314 F. 2d 848. Surely, this scheme is more "rational" than requiring union members to wait until *after* the election has been completed to complain of the deprivation of their democratic rights.

Indeed, the only "irrationality" here lies in petitioner's displeasure with Congress's purpose. This Court has often emphasized the desirability of allowing private suits to protect valuable rights, even though an administrative agency may be charged with responsibilities in the area; cf. *Smith* v. *Evening News Association* (1962), 371 U. S. 195. In this area, where the Secretary of Labor's authority is limited to *post*-election challenges, it was the mark of sound Congressional wisdom to provide for private suits for the protection of democratic rights in advance of union elections. It is petitioner's attempt to prohibit such suits that is truly "irrational."

2. *There is No Conflict of Decision.*

By blurring the distinction between two disparate rights (between the right *to nominate* a candidate and the right *to be* one), petitioner attempts to claim a conflict between the decision below and that of the Third Circuit in *Mamula* v. *United Steelworkers* (1962), 304 F. 2d 108 (Petition, pp. 39-49). But petitioner neglects to mention that the *Mamula* case, *supra*, (unlike the present one) was brought by a candidate seeking to vindicate his candidacy—it did *not* involve infringement of a Title I right.

The point is this: Section 101(a)(1) guarantees to union members certain specified democratic rights, among them the right to nominate candidates in union elections. But it does not guarantee a right to be a candidate, nor does any other provision of Title I. As was observed by the court in *Johnson* v. *San Diego Waiters' Union* (SD Calif. 1961), 190 F. Supp. 444, at 447, "the emphasis there [in

Title I] is placed on the rights of the nominator, not the rights of the nominee." And cf. *Wayfield* v. *Babcock* (ED N. Y., June 10, 1963), 53 LRRM 2947, at 2948; 47 LC ¶ 18,375 (n/o/r).

In the *Mamula* case, *supra*, plaintiff had been disciplined for misconduct by removal from office and by being barred from office for five years, unless within that time he should return certain moneys misappropriated by him; cf. *Mamula* v. *Local 1211* (WD Pa. 1962), 202 F. Supp. 348; modif. *ibid*, 205 F. Supp. 915. He brought suit to direct the union to place his name on the ballot as a candidate for district office (cf. Petition, p. 40). The Court there observed, however, (cf. Petition, pp. 48-49) that Mamula's Title I right to nominate candidates had not been in any way infringed: he had not sought to nominate himself or anyone else, although (as chairman of the nominations meeting) he could have nominated anyone he liked. It remarked that the members who had nominated Mamula might possibly claim that Mamula's disqualification infringed *their* nomination rights, but that Mamula himself was in no position to make that claim (cf. Petition, p. 49).

In short, the dismissal of Mamula's complaint has no bearing upon the present issue, since that complaint did not rest upon a Title I right.

CONCLUSION

FOR THE FOREGOING REASONS, IT IS RESPECTFULLY SUBMITTED THAT THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED.

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Attorney for Respondents.

December, 1963.